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NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Autodesk, Inc., a Delaware corporation,)

Plaintiff,)

vs.)

Dassault Systèmes Solidworks)
Corporation, a Delaware corporation,)

Defendant.)

No. MC-09-00096-PHX-FJM

(United States District Court Northern District
of California Case No. 3:08-CV-04397-WHA)

ORDER

The court has before it Autodesk Inc. (“Autodesk”)’s motion to compel (doc. 1), The Open Design Alliance (“ODA”)’s response, motion for leave to exceed the page limit, and lodged motion for protective order (doc. 11, 12, & 20), and Autodesk’s reply/response (doc. 21).

We grant ODA’s motion for leave to exceed the page limit only so that we may consider the merits on a timely basis. There is, however, no justification for the abusive length of the motion for protective order.

Autodesk moves to compel nonparty ODA to comply with a subpoena for deposition and production of documents served on June 2, 2009. ODA contends that it did not receive proper notice of the motion to compel and that the subpoena poses an undue burden or expense under Rule 45, Fed. R. Civ. P., due to ODA’s small size and its earlier discovery in a separate proceeding. ODA also moves for a protective order and to quash or modify the

1 subpoena. ODA's objections are both untimely under Rule 45(c)(2)(B), Fed. R. Civ. P., and
2 unavailing. We find that ODA received notice and that an estimated forty hours of document
3 production and sixty hours of deposition preparation constitute neither an undue burden
4 under the circumstances nor a justification for a three-month delay. We deny ODA's motion
5 for protective order and grant Autodesk's motion to compel.

6 We note that counsel held ongoing negotiations concerning earlier discovery without
7 resolution. If ODA chooses to make its earlier discovery admissible in Autodesk's current
8 action, it may offer it in partial response to the subpoena. Regardless, ODA must comply
9 with the subpoena as written. We also note that there is a September 25, 2009 deadline for
10 close of discovery.

11 We grant Autodesk's request for Rule 37(a)(5), Fed. R. Civ. P., expenses associated
12 with the motion to compel and we deny ODA's request for attorney's fees. ODA may move
13 for reimbursement of significant expenses incurred in producing documents after compliance.

14 **IT IS THEREFORE ORDERED GRANTING** ODA's motion for leave to file
15 excess pages (doc. 12), **DENYING** ODA's lodged motion for protective order (doc. 20), and
16 **GRANTING** Autodesk's motion to compel (doc. 1).

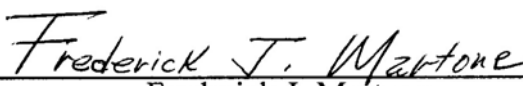
17 **IT IS FURTHER ORDERED** that ODA:

18 (1) produce all documents identified in the subpoena on or before September 25, 2009
19 and an appropriate privilege log; and

20 (2) designate a Rule 30(b)(6), Fed. R. Civ. P., witness to be deposed before September
21 25, 2009 for no more than seven hours at a location of ODA's choosing.

22 **IT IS FURTHER ORDERED** that ODA pay Autodesk's reasonable expenses,
23 including attorney's fees, incurred in moving to compel.

24 DATED this 17th day of September, 2009.

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27 
28 Frederick J. Martone
United States District Judge